

**BEFORE THE DENTAL BOARD
OF THE STATE OF IOWA**

IN THE MATTER OF)	
GENE V. MUELLER, D.D.S.)	NOTICE OF HEARING
RESPONDENT.)	AND STATEMENT OF CHARGES

COMES NOW the Iowa Dental Board (Board) and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 650 Iowa Administrative Code (IAC) 51.6. Respondent was issued Iowa dental license number 05711 on July 1, 1970. Respondent's license is current and will next expire on August 31, 2014. Respondent's address as reported to the Board is 2228 Hickory Grove Road, Davenport, Iowa 52804.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on February 1, 2013, before the Iowa Dental Board. The hearing shall begin at 9:00 a.m. and shall be located in the conference room at the office of the Iowa Dental Board, 400 SW 8th Street, Ste. D, Des Moines, Iowa.

2. Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges you are required by 650 IAC 51.12(2) to file an Answer. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges. Pleadings shall be filed with the Board at the following address: Iowa Dental Board, 400 SW 8th Street, Ste. D, Des Moines, Iowa 50309.

3. Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on pre-hearing matters, and be present to assist and advise the Board at hearing.

4. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 650 IAC chapter 51. At hearing, you may appear personally or be represented by legal counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at hearing. If you need to request an alternative time or date for hearing, you must comply with the requirements of 650 IAC 51.18. The hearing may be open to the public or closed to the public at your discretion.

5. Pre-hearing Conference. Any party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board's rules regarding pre-hearing conferences are contained at 650 IAC chapter 51.17.

6. Prosecution. The Office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: Theresa O'Connell Weeg, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

7. Communications. You may not contact Board members in any manner, including by phone, letter, or e-mail, about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties

have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to Melanie Johnson, J.D., Executive Director at 515-281-5157.

B. LEGAL AUTHORITY AND JURISDICTION

1. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 153, and 272C.

2. Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 153, and 272C and 650 IAC chapters 30 and 51.

3. Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 650 IAC 51.22.

C. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

Respondent is charged under Iowa Code Section 153.34(8) (2011) and 650 IAC 30.4(16) with failure to maintain a satisfactory standard of competency in the practice of dentistry.

COUNT II

Respondent is charged under Iowa Code Section 153.34(4) (2011) and 650 IAC 27.11 for failing to maintain patient records in a manner consistent with the protection of the welfare of the patient.

D. FACTUAL CIRCUMSTANCES

1. Respondent is a general dentist engaged in the practice of dentistry in Davenport, Iowa.
2. On January 10, 2008, Respondent was charged for failure to comply with standard precautions for preventing and controlling infectious diseases and managing personnel health and safety concerns related to infection control.
3. To resolve these charges, Respondent entered into a Notice of Hearing, Settlement Agreement and Final Order (combined) with the Board in January 2008, placing Respondent's dental license on probation for a period of two years.
4. Iowa Code Section 153.34(8) provides that a ground for discipline includes failure to maintain a reasonably satisfactory standard of competency in the practice of dentistry.
5. Board rule 27.11 requires that a dentist maintain patient records in a manner consistent with the protection of the welfare of the patient.
6. The Board received a complaint from the guardian of pediatric patients #1 and #2. The complaint stated that Respondent failed to diagnose decay resulting in extractions of teeth in both pediatric patients. A Board consultant reviewed these cases and determined that the Respondent did not practice to an acceptable standard of care for the following reasons:
 - a. Respondent diagnosed decay only on teeth B and I of patient #1. Radiographs provided clearly show evidence of decay on teeth A, B, I, and J.

- b. Respondent's record states that because the child is 8.5 years old no treatment is needed as the teeth will be lost soon. The standard of care would dictate that these teeth be treated.
 - c. Respondent's records indicate that patient #2 had a gag reflex which did not allow him to take radiographs.
 - d. The consultant noted that a subsequent dentist was able to obtain radiographs and diagnosed tooth T with gross decay resulting in extraction.
7. In March and June, 2011 multiple patient records were subpoenaed from Respondent. These records were reviewed by a Board Consultant who concluded that Respondent is not practicing to an acceptable standard of care for the following reasons:
- a. Respondent on multiple occasions did not diagnose decay that was clearly visible on radiographs.
 - b. Respondent on multiple occasions failed to obtain bitewing radiographs on patients, when reviewing bitewing radiographs is the only appropriate method to diagnose interproximal decay.
 - c. Respondent's clinical records lack updated health histories, periodontal probing or screenings, assessment of the oral tissues, or plans of intended treatment.

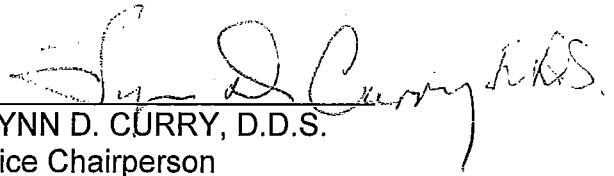
E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 650 IAC Chapter 51.19. If you

are interested in pursuing settlement of this matter, please contact Melanie Johnson, J.D., Executive Director, at 515-281-5157.

F. PROBABLE CAUSE FINDING

On this 25th day of October, 2012, the Iowa Dental Board found probable cause to file this Notice of Hearing and Statement of Charges.


LYNN D. CURRY, D.D.S.
Vice Chairperson
Iowa Dental Board
400 SW 8th Street, Suite D
Des Moines, IA 50309

cc:Theresa O'Connell Weeg
Assistant Attorney General
Iowa Attorney General's Office
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Des Moines, IA 50319